

THE PATENTS EXAMINATION REGULATIONS, 2003

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The Patent Examination Board, established in terms of section 21 of the Patents Act, 1978 (Act 57 of 1978), has, in terms of section 21 (3) (a) of the Patents Act, made the following regulations and prescribed the following syllabuses in regard to the prescribed examination referred to in section 20 of the Patents Act, 1978:

DEFINITIONS

1. In these regulations, unless the context indicates otherwise-

'Board' means the Patent Examination Board established under section 21 of the Act;

'candidate' means a person who presents himself/herself to the Patent Examination Board with the intention of enrolling for or who has already enrolled, for the Patent Examinations;

'Chairperson' means the Chairperson of the Board appointed in terms of section 21 (2) (a) of the Act;

'examination' means the prescribed examination referred to in section 20 of the Act;

'journal' means the patent journal referred to in section 14 of the Act; **'office'** means the patent office established under section 5 (1) of the Act; **'the Act'** means the Patents Act, 1978 (Act 57 of 1978); and

'the previous regulations' means the Patent Examination Regulations, as amended, published in the October 1993 edition of the Patent Journal.

EXAMINATIONS

2.

- (a) The examination shall be held during or around midyear, on such dates as the Chairperson may determine, and the Board may, in its discretion and having regard to, inter alia, the number of candidates, conduct the examinations in any one of four centres, namely, Cape Town, Bloemfontein, Durban, Pretoria or such other centre as it may determine; and
- (b) The examination dates shall be made known to the candidates enrolled for the examination at least eight weeks prior to such dates, either by written notification or by publication in the journal or both.

CONDITIONS FOR ENROLMENT

3.

Only candidates who qualify in terms of at least one of the following criteria shall be entitled to enrol for the examinations:

- (a) a candidate in possession of a technical or scientific diploma or degree from a university or technikon, involving at least a three- year course of study;
- (b) a candidate in possession of any technical or scientific qualification, which in the opinion of the Board, is sufficient to enable the candidate to meet the requirements of the patent examinations; or

- (c) any candidate who has adequate practical experience in a technical or scientific field, which in the opinion of the Board, is sufficient to enable the candidate to meet the requirements of the patent examinations.

4.

- (a) Every candidate shall, on or before the thirty-first (31) day of January of the year in which he/she proposes to sit for any examination, apply to the Board, on a form to be obtained from the office, to be enrolled as a candidate;
- (b) A candidate shall submit to the Board, on first enrolment, proof of his/her qualifications and an application for any exemption to which he/she may consider himself/herself entitled, stating his/her proposed course of study;
- (c) A candidate may be exempted by the Board from interpretation of drawings in regulation 10 on the basis of any engineering or other appropriate qualification or practical experience which, in the opinion of the Board, is sufficient to enable the candidate to read and interpret drawings; and
- (d) Late entries may be approved by the Board on good cause shown.

5.

A candidate who fails to pass or obtain an exemption from all of the subjects in Group 1 of regulation 9 within a period of four calendar years after first enrolling for the examination or, in the case of a candidate who first enrolled for the examination before the publication of these regulations, within such further period as the Board may determine, shall not be allowed to enrol for any further examination of the Board except with the permission of the Board.

6.

A candidate who fails to pass or obtain an exemption from all of the subjects in Group 2 of regulation 9 within a period of four calendar years after first enrolling for any Group 2 subject or, in the case of a candidate who first enrolled for any Group 2 subject before the publication of the these regulations, within such further period as the Board may determine, shall not be allowed to enrol for any further examination of the Board except with the permission of the Board.

7.

Except with the permission of the Board, no candidate shall be allowed to enrol for more than four subjects in any one year.

8.

Except where the Board otherwise, permits, a candidate shall have passed, or been exempted from all the subjects in Group 1 of regulation 9 before the candidate may enrol for subjects (e), (f) and (g) in regulation 9.

SUBJECTS FOR EXAMINATION

9.

The examination shall be conducted in the following subjects:

GROUP 1

- (a) Legal framework for the protection of Intellectual Property in South Africa, including trade marks, copyright and other intellectual property relevant to patent

- law - one four hour paper;
- (b) S A patent law and practice - one four-hour paper;
 - (c) S A design law and practice - one four-hour paper; and
 - (d) Selected international patent laws, systems, conventions and treaties - one four-hour paper.

GROUP 2

- (e) The drafting of patent specifications - two four-hour papers;
- (f) Practical legal problems with regard to patents - two three-hour papers; and
- (g) Patent attorney's practice - one four-hour paper.

INTERPRETATION OF DRAWINGS

10.

- (a) Candidates will be required to have a certain level of competence in interpretation of drawings. Candidates who are not exempt will be required to attend a one-day workshop run by the course convenor of this subject; and
- (b) There will be no formal written examination for interpretation of drawings. At the end of the one-day workshop the convenor will test the level of competence of the candidate through a practical exercise. The course convenor may prescribe additional practical exercises for any candidate who is found, at the end of the one-day workshop, not to have the required level of competence. After the completion of such additional practical exercises, the candidate's ability can again be tested by the convenor.

INSTRUCTION

11.

Course convenors will be appointed for each subject and will be responsible for:

- (a) Compiling and distributing a course outline detailing the syllabus for the subject and material to be covered by the candidate;
- (b) Presenting a comprehensive overview of the subject content to candidates over at least two days in each of the four centres or such other centre as determined by the Board, subject to a minimum number of candidates from each region enrolling for a particular subject; and
- (c) Assisting candidates and providing guidance on an ad hoc basis.

APPOINTMENT OF COURSE CONVENORS. EXAMINERS AND MODERATORS

12.

- (a) The Board will call for nominations of course convenors, examiners and moderators by publishing a notice in the Government Gazette, the Patent Journal or other appropriate legal publications; and
- (b) The Board shall appoint for a period of three years, subject to annual review, a course convenor, an examiner and a moderator in respect of each of the subjects in Group 1 of regulation 9, and a course convenor, two examiners and a moderator in respect of each of the subjects in Group 2 of regulation 9, and the Chairperson shall advise course convenors, examiners and moderators of their appointment. Where appropriate the course convenor and the examiner can be the same person.

SUBJECTS AND SYLLABUSES FOR EXAMINATION

13.

The syllabuses for the subjects set out in regulation 9 shall be as follows:

GROUP 1 SUBJECTS

- (a) Candidates will be introduced to the different forms of Intellectual Property, including trade marks, copyright, selected national and global emerging issues relevant to patent law;
- (b) This subject will cover a study of the Patents Act 1978 (as amended) and regulations promulgated thereunder. The following topics, together with selected case law that demonstrates the principles applicable, will be included:
 - (i) Patentable inventions, novelty and obviousness;
 - (ii) Administrative provisions;
 - (iii) The patent application and grant;
 - (iv) Effect, duration and maintenance;
 - (v) Grounds for revocation and infringement
 - (vi) Corrections and amendments; and
 - (vii) General (Miscellaneous sections such as licences, assignments and secret inventions).
- (c) A study of the Designs, Act of 1993 (as amended) and the regulations promulgated thereunder. Reference might be made to the Designs Act of 1967. The following topics, together with selected case law that demonstrates the principles applicable, will be included:
 - (i) What is a registered design;
 - (ii) Novelty;
 - (iii) Effect, duration and maintenance;

- (iv) Ownership;
 - (v) Application procedures;
 - (vi) Infringement, revocation and surrender; and
 - (vii) General (miscellaneous provisions such as licences and restoration).
- (d) A study of selected international patent laws, systems, conventions and treaties. In studying these treaties, the emphasis will be on a comparison of material provisions of these treaties/conventions with relevant provisions of the South African Patents Act; and the extent to which they affect the activities of the SA Patent Practitioner. The following patent laws, systems, conventions and treaties will be included:
- (i) the patent systems and the patent laws of foreign, regional and international jurisdictions including the United States of America (USA), United Kingdom (UK), Germany, France, Australia, Japan, Canada, the European Patent Convention, European Patent Office (EPO)/Community Patents, Organisation Africaine de la Propriete Intellectuelle (OAPI), African Regional Intellectual Property Office (ARIPO), and the Patent Cooperation Treaty (PCT), in respect of alternative forms of protection available (patents and utility models), patentable subject matter, novelty requirements, applicants, filing requirements, claim format and requirements, prosecution requirements and procedures, grant, post-granted procedures such as re-examination, duration and maintenance fees; and
 - (ii) the Paris Convention, Patent Cooperation Treaty, European Patent Convention, General Agreement on Tariffs and Trade (GATT), 1994, on trade related aspects of intellectual property rights (TRIPs), including trade in counterfeit goods.

GROUP 2 SUBJECTS

- (e) In the first paper candidates will be provided with a description of no more than two inventions and will be required to identify the inventive feature(s) of each invention and draft a first claim for each invention. In the second paper candidates will be required to draft a South African patent specification in respect of an invention described to them;

- (f) Candidates will be set practical legal problems on the interpretation of patent specifications, the infringement of patents, the amendment of patents, the validity of patents, the ownership of inventions; and will be required to draft appropriate pleadings and give opinions; and
- (g) Candidates will be examined on their competency to deal with questions of practice under the laws relating to patents in South Africa, for example, the granting of a patent, the revocation of patents, restoration, assignment and licensing (including compulsory licences), infringement of patents, the practice of the Court of the Commissioner of Patents, relevant High Court and Supreme Court of Appeal rules, and application of decided patent cases.

INTERNSHIPS

14.

It is strongly recommended that each candidate serve an internship of between three to six months at a patent law firm or a period of three to six months at the Companies and Intellectual Property Registration Office (CIPRO).

CONDUCT OF EXAMINATION

15.

- (a) The examiner(s) shall be responsible for setting the required examination paper(s) in the subject concerned, which shall be submitted to the moderator to be moderated. The examiner(s) shall also be responsible for marking the examination scripts, and for allocating marks and symbols as provided in regulation 16 (a);
- (b) The moderator shall be responsible for evaluating the examination paper(s) when it is (they are) submitted to him or her in terms of paragraph (a) of this regulation, and for evaluating

the marks and symbols awarded by the examiner(s) in respect of the examination scripts;

- (c) The examinations for the Group 1 subjects and for subject (g) in Group 2 will be closed book examinations. The examination papers for Group 1 subjects will be structured to include questions that require one word/one sentence answers (one mark questions); short questions (5-10 marks) and essay-type questions (15-25 mark questions). The Board will satisfy itself that the examination paper is balanced and as far as possible tests the candidates' knowledge of a substantial part of the syllabus;
- (d) Candidates writing the two four-hour papers for subject (e) in regulation 9 will be given two extra hours within which to complete each paper. The only material that candidates will be entitled to bring into the examination venue are one or more dictionaries. For the purposes of marking, the second paper will be divided into two main sections:
 - (i) the claims, to which 50% of the marks will be allocated; and
 - (ii) the rest of the specification, to which the remaining 50% of the marks will be allocated.

In order to obtain a pass for this paper, candidates must obtain not less than 40% for each of these two sections.

- (e) The syllabus for subject (f) in regulation 9 will be divided between two papers, and candidates will be informed of the division prior to the examinations. The only materials candidates will be entitled to bring into the examination venue are the Supreme Court Act, the Uniform Rules of the High Court, and the Patents Act and regulations; and
- (f) Before the results of any examination are made final, they shall be approved by the Board.

16.

- (a) The pass mark in each subject shall be 50 per cent.

The following symbols shall be used to reflect the marks awarded to a candidate in each subject:

A: 75 per cent and over

- B: 60-74 per cent
- C: 50-59 per cent
- F: 49 per cent and under (unless a supplementary examination has been allowed)
- S: Supplementary examination allowed;

- (b) If a candidate has failed an examination in a subject but has obtained at least 45 per cent in that subject, the Board may, after taking into consideration any other examination results of the candidate, allow the candidate to sit for a supplementary examination in that subject;
- (c) If a candidate has enrolled for an examination in a particular subject but is prevented from sitting for it by reason of illness, the Board may, upon being provided with an acceptable medical certificate, and after taking into account any other examination results of the candidate, allow the candidate to sit for an aegrotat examination in that subject;
- (d) A supplementary or aegrotat examination may at the discretion of the examiner(s) or moderator(s) be in the form of a written or an oral examination. However, a supplementary or aegrotat examination for subject (g) in regulation 9 must be in the form of an oral examination; and
- (e) Supplementary and aegrotat examinations shall be held at a time and place determined by the Chairperson in consultation with the relevant examiner(s) and moderator(s) as soon as possible after the examination in respect of which the supplementary or aegrotat examination was allowed.

17.

A candidate who has passed a subject or obtained an exemption from a subject, shall retain credit for that subject for a period of five years or for such longer period as the Board may allow. In the event of a candidate not passing or being exempted from every subject provided for by regulation 9 within such period of five years, the Board may, in its discretion, either extend such period or require the candidate to sit for one or more of the subjects again. In exercising its discretion in terms of this regulation, the Board shall

consider the general performance of the candidate, as well as changes in the relevant law, practice or syllabus, and any other circumstances, which it may consider relevant.

MISCONDUCT IN REGARD TO EXAMINATIONS

18.

The Board may debar any candidate from writing any examination of the Board or from doing so in a particular year if, after hearing the candidate, the Board is of the opinion, that such candidate has misbehaved during, or in connection with, any examination of the Board.

APPLICATION OF THESE REGULATIONS

19.

These regulations replace the previous regulations and shall apply to all candidates enrolling for the examination either on or after the date of publication of these regulations in the journal.

TRANSITIONAL PROVISIONS

20.

Notwithstanding the provisions of regulations 3 and 19 above, any candidate who does not satisfy the requirements of regulation 3 of these regulations but who satisfied the requirements of regulation 3 of the previous regulations, and who successfully completed at least one subject under the previous regulations, shall be entitled to enrol for the Examinations in terms of these regulations.

21.

Any candidate who has successfully completed subjects (b) and (c) in regulation 10 of the previous regulations will receive subject credit for subject (a) in regulation 9 of these regulations. Similarly, any candidate who has successfully completed any of subjects (a), (d), (e), (h), (i) and (j) in regulation 10 of the previous regulations will receive subject credit for corresponding subjects (b), (c), (d), (e), (f), and (g) in regulation 9 respectively of these regulations. Any candidate who has successfully completed subject (g) of regulation 10 of the previous regulations, will be exempted in terms of regulation 10 of these regulations.